



## FAQs

### **Q. What prompted the issue with 37 Main?**

A. The issue was prompted as a result of 65 9-1-1 complaints and additional calls from residents who live near 37 Main over the course of two years. Other businesses have received noise complaints over this period; however, they have been responsive when told of the complaint and adjusted their operations. 37 Main was a 17,000-square-foot, 900-seat restaurant, bar and music venue that opened in May 2014 in commercial center adjoining the Medlock Bridge neighborhood. There have been longstanding complaints from homeowners in the Medlock Bridge neighborhood about noise during concerts. More specifically, residents have stated that the music is so loud at times that they can hear the lyrics or the bass from their property.

### **Q. What efforts were made to resolve this issue?**

A. 37 Main chose to not follow the established ordinance of the city that was in place both prior to and after their opening to conduct business and ultimately decided to neither make the necessary structural or operational changes to meet its standards. The facts and timeline related to this issue demonstrate a two-year process where the City made every effort to work with the business and allow it to succeed in its location. When 37 Main first came to Johns Creek, the city was excited to have such an impressive entertainment facility as part of the community. What became quickly apparent, however, is that the manner in which 37 Main chose to operate was in violation of the city's Nuisance Ordinance, unsuitable to their building and severely disruptive to the lives of the surrounding residents. Numerous meetings were held between city representatives, 37 Main and their landlord in an attempt to resolve the noise nuisance issues. A commissioned sound engineering study showed that a structural remedy alone would not resolve the issue and additional reduction of sound volume at the soundboard was required. Unfortunately, the option to make the necessary structural changes was not pursued and 37 Main continued to operate without the necessary noise reduction.

### **Q. What options did the independent sound studies propose?**

A. Ceiling and door dampening.

### **Q. When did this first become an issue?**

A. On June 17, 2014, the city received its first complaint from a neighbor about the loud music coming from 37 Main, which was the month following its opening. The city met with 37 Main and issued a courtesy notice informing them of the neighbor's complaint and asked them to lower the volume. Over the next six months, 19 neighbor calls were made to 911 stating that the noise levels made it impossible to sleep up to 2:00 a.m. During this time, City officials met with 37 Main and attempted to work out solutions to the problem. It was not until December 16, 2014, after over six months without resolution, that a police officer issued a citation to 37 Main for violation of the city's Nuisance Ordinance. More than 45 additional noise complaints were made between



then and June 2016. The city worked with 37 Main for two years in an attempt to resolve the matter.

**Q. Why didn't you know about the potential noise issue beforehand?**

A. Any business moving into any community is responsible for ensuring that it does not create issues, violate the rights of local residents, and that it complies with local city ordinances. It did not become obvious there was a problem with noise until after 37 Main moved in and began operations. Shortly thereafter, the landlord commissioned a sound engineering study that showed that the building could not contain the noise and that the tenant needed to lower the volume. Neither of these issues were ever effectively resolved. It is important to note that complaint calls have not been received every night. During several other nights, 37 Main has other events that did not generate nuisance complaints. It is only when they choose to operate with excessive and unreasonable noise that the building cannot contain that the nuisances occurred.

**Q. Does the ordinance only apply to 37 Main?**

A. The noise ordinance applies city wide and is not directed at any single business. With respect to 37 Main, it has received more than 65 complaints over the past two years regarding noise emanating from its establishment and these issues were not properly addressed. While several other businesses have received noise complaints, only 37 Main received this amount of ongoing complaints. It is important to note that 37 Main's court appearances were not subject to the newly adopted ordinance and they were found guilty of violating the established Nuisance Ordinance that was in place when they began their business.

**Q. How do other businesses compare with 37 Main with respect to noise ordinances?**

A. Under both the current and prior version of the Nuisance Ordinance, other businesses such as golf courses are treated exactly the same way as 37 Main. Businesses such as golf courses are still subject to the Nuisance Ordinance based on the reasonable person test just as they always have been since the inception of our city. It is also important to note that 37 Main has been convicted on multiple citations having been held to the exact same standard.

**Q. Why was 37 Main approved for business so close to a neighborhood?**

A. The property has been zoned for commercial uses since 1989, including a restaurant with a bar. 37 Main, which is a restaurant with entertainment, falls within that use. This type of business is very desirable to have in Johns Creek and the shopping center has appropriate zoning. However, after beginning live music it became apparent that the building was not renovated sufficiently to contain the loud music from the bands or the DJ. There were solutions to the issue and the landlord and tenant were unwilling to make the changes necessary to operate in compliance with the city's ordinances. Entertainment venues can be very desirable businesses in a community; in fact, several nearby residents indicated their hope that the business succeeded. Unfortunately, once live music began, it became apparent that the building design was insufficient to contain the loud music sought by 37 Main. There were solutions available to be a good neighbor while operating a unique and enjoyable business, but the solutions necessary for code compliance were not implemented.



**Q. How did police officers determine whether or not resident complaints were valid?**

A. During sworn court testimony, our officers documented that they only issued citations when they could independently confirm that there was enough noise present at the time they responded to numerous 911 complaints that constituted a nuisance as defined in our ordinance. There were situations in which that noise was even audible from inside one of the complainant's home. A thorough review of the court transcript, which is available upon request, corroborates all the facts surrounding officer testimony.

**Q. Why was the plainly audible option selected over using a sound meter to determine whether a certain level of noise is unacceptable?**

A. Plainly audible better allows an officer to determine the source of the noise than a sound meter, which only measures the sound level. Even with a meter, an officer must still use his or her judgment to determine what was the source of the offending noise.

**Q. How does Johns Creek's noise ordinance compare with neighboring cities?**

A. Unlike Johns Creek, many neighboring cities are not nearly as residential. Upon discussions with our neighboring cities, it became apparent that they were not facing a significant number of noise complaints as we were experiencing with 37 Main nor were they really using the sound meter method to obtain compliance in those instances when there were complaints.

**Q. What role did the City Council have in this issue?**

A. The City Council responded to the complaints of its residents as it does with any issue. It directed the staff to monitor the issue and work to resolve it, which the staff diligently worked to do over the course of two years. However, since none of the proposed solutions to come into compliance with the city's ordinances were implemented, the complaints continued and the municipal court made an independent decision to impose a curfew on 37 Main based on the law and after 37 Main was afforded an opportunity to be heard.

**Q. What does the noise ordinance say?**

A. The new ordinance uses the plainly audible standard for determining whether amplified sound from an entertainment venue is violating the ordinance. A "plainly audible" standard is one in which a listener with normal hearing can understand speech, whether the voice is normal or raised, and whether the listener can distinguish repetitive bass sounds and musical rhythms without the aid of a listening device at a receiving residential property.

A sound-meter can also be used by a police officer or code enforcement officer to assist however it is not the determining factor.

The new ordinance also prohibits operation of power equipment for landscaping and yard maintenance equipment on residential between 9 p.m. and 7 a.m., not before 8 a.m. on Saturdays, and not before 10 a.m. Sundays. For non-residential properties, excluding golf courses, the same hours apply within 250 feet of a residential property.



Exemptions to the ordinance include parades, athletic events, public assemblies, special outdoor events, public safety vehicles, emergency signaling devices, or public safety personnel alerting persons of an emergency.

Violations carry a minimum \$250 fine for a second offense within any 12 month rolling period; a minimum \$500 for a third violation within a 12-month rolling period; and a minimum \$1,000 fine for subsequent offense within a 12-month rolling period.

37 Main's court appearances were not subject to the newly adopted ordinance and they were found guilty of violating the established nuisance ordinance that was in place when they began their business.